

This letter concerns the low 1% State rate of tax applicable to drugs and medicines. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

June 21, 2007

Dear Xxxxx:

This letter is in response to your letter dated October 24, 2006, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC, requests a written opinion regarding the sales taxability of Biotene Mouthwash and Oral Balance Gel. Biotene has a medical claim of helping heal minor mouth irritations. Oral Balance Gel's medical claim is providing relief, soothes and protects the condition of dry mouth. I have also attached product information for this item.

Thank you for your help.

DEPARTMENT'S RESPONSE:

All gross receipts from sales of tangible personal property in Illinois are subject to Retailers' Occupation Tax and Use Tax unless an exemption is specifically provided. Food, drugs, medicines and medical appliances are not taxed at the normal rate of 6.25%. These items are taxed at a lower rate of 1% plus any applicable local taxes. See 86 Ill. Adm. Code 130.310.

Under the Retailers' Occupation Tax Act, a medicine or drug is any pill, powder, potion, salve, or other preparation *intended by the manufacturer for human use and which purports on the label to have medicinal qualities*. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim. See 86 Ill. Adm. Code 130.310(c). The information you provided with your letter appears to be advertising from an online supplier's website. This information is not

sufficient to determine if the label on the items or its packaging makes similar claims. However, the following information may assist you in making the determination whether the items you have referenced qualify as a drug or medicine under Section 130.310(c).

Examples of medicinal claims that *will qualify* the product for the low rate of tax include, but are not limited to:

- i) medicated
- ii) heals (a medical condition)
- iii) cures (a medical condition)
- iv) for relief (of a medical condition)
- v) fights infection
- vi) stops pain
- vii) relief from poison ivy or poison oak
- viii) relieves itching, cracking, burning
- ix) a soaking aid for sprains and bruises
- x) relieves muscular aches and pains
- xi) cures athlete's foot
- xii) relieves skin irritation, chafing, heat rash and diaper rash
- xiii) relief from the pain of sunburn
- xiv) soothes pain

Please note the use of the terms "antiseptic," "antibacterial" or "kills germs" may or may not constitute a medicinal claim. The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim. However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.

Examples of claims that *do not* constitute medicinal claims include, but are not limited to:

- i) cools
- ii) absorbs wetness that can breed fungus
- iii) deodorant, or destroys odors
- iv) moisturizes
- v) freshens breath
- vi) antiperspirant
- vii) sunscreen
- viii) prevents
- ix) protects

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
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TDC:msk